

AMENDED IN SENATE JULY 2, 2003

AMENDED IN ASSEMBLY APRIL 8, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 862

Introduced by Assembly Member Firebaugh

February 20, 2003

An act to add Section 11045 to the Government Code, relating to state contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 862, as amended, Firebaugh. Personal services contracts: legal services.

The California Constitution establishes a state civil service system that, with limited exceptions, includes every officer and employee of the state. Existing law establishes standards for the use of personal services contracts outside the civil service system, if contracting would achieve cost savings, as defined, or if certain conditions can be met.

Existing law also provides, with certain exceptions, that the written consent of the Attorney General is required prior to the employment of counsel for representation of any state agency or employee in any judicial proceeding.

This bill would require that state agencies, as defined, and the Attorney General, provide specified notices to the designated representative of State Employees Bargaining Unit 2 regarding contracts ~~for legal services~~ with outside counsel and the consents of the Attorney General with regard to those contracts.

This bill would except from the notice requirement certain confidential matters and *would* deem disclosures made in a *required* notice to be ~~privileged~~ *privileged* communications.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11045 is added to the Government
2 Code, to read:

3 11045. (a) (1) Whenever a state agency requests the consent
4 of the Attorney General to employ outside counsel, as required by
5 Section 11040, the state agency shall ~~immediately~~ *within five*
6 *business days* provide the designated representative of State
7 Employees Bargaining Unit 2 ~~with a copy of the request, including~~
8 ~~all supporting documents.~~ *with written notification of the request.*
9 *The notice shall include the items enumerated in subdivision (d).*

10 (2) *All state agencies, other than the office of the Attorney*
11 *General, that are not required to obtain the consent required by*
12 *subdivision (c) of Section 11040, shall provide written notice of*
13 *any proposed contract for outside legal counsel to the designated*
14 *representative of State Employees Bargaining Unit 2 prior to*
15 *execution of the contract by any party. The notice shall include the*
16 *items required by subdivision (d).*

17 (3) *Whenever the Attorney General determines the need to*
18 *employ outside legal counsel pursuant to subdivision (b) of Section*
19 *12520, the Attorney General shall give written notice to the*
20 *designated representative of State Employees Bargaining Unit 2*
21 *within 10 days of that determination. The notice shall include the*
22 *items enumerated in subdivision (d).*

23 (b) The Attorney General shall provide the designated
24 representative of State Employees Bargaining Unit 2 with a
25 written report, at least monthly, of all consents granted to every
26 state agency pursuant to Section 11040.

27 ~~(c) (1) Whenever the Attorney General determines the need to~~
28 ~~employ counsel pursuant to subdivision (b) of Section 12520, the~~
29 ~~Attorney General shall give written notice to the designated~~
30 ~~representative of State Employees Bargaining Unit 2 within 10~~
31 ~~days of that determination. The notice shall include the items~~
32 ~~enumerated in subdivision (e).~~

~~(2) All state agencies, other than the Attorney General, shall provide written notice of any proposed legal services contract to the designated representative of State Employees Bargaining Unit 2 prior to the execution of the contract by any party. The notice shall include the items enumerated in subdivision (e).~~

~~(d)–~~

(c) Notwithstanding the above notice requirements, whenever any state agency submits a proposed contract for legal services outside counsel to the Department of General Services pursuant to Section 10335 of the Public Contract Code, the agency shall provide a copy of the contract, together with all supporting documents required by that section, contract to the designated representative of State Employees Bargaining Unit 2.

~~(e)–~~

(d) “Written notice” within the meaning of this section shall include, but not be limited to, all of the following:

(1) A copy of the complaint or other pleadings, if any, that gave rise to the litigation or matter for which a contract is being sought, or other identifying information.

(2) The justification for the contract, pursuant to subdivision (b) of Section 19130.

(3) The nature of the legal services to be performed.

(4) The estimated hourly wage to be paid under the contract.

(5) The estimated length of the contract.

(6) The identity of the person or entity that is entering into the contract with the state.

~~(f) Notwithstanding the notice requirements set forth in this section, notice shall be given prior to the approval of any contract.~~

~~(g)–~~

(e) “State agency,” as used in this section, means every state office, department, division, bureau, board, or commission, including the Board of Directors of the State Compensation Insurance Fund, but does not include the Regents of the University of California, the Trustees of the California State University, the Legislature, the courts, or any agency in the judicial branch of government.

~~(h)–~~

(f) (1) The notice requirements of this section do not apply to contracts for expert witnesses or consultations in connection with

1 a confidential investigation or to any confidential component of a
2 pending or active legal action.

3 (2) The exemption authorized in paragraph (1) shall only apply
4 as long as necessary to protect the confidentiality of the
5 investigation or the confidential component of a pending or active
6 legal action.

7 (3) Disclosures made pursuant to this section are deemed to be
8 privileged communications for purposes of subdivision (c) of
9 Section 912 of the Evidence Code, and shall ~~neither~~ not be
10 construed to be a waiver of *any privilege or exemption provided*
11 *by law, including, but not limited to*, the lawyer-client privilege, as
12 described in Section 952 of the Evidence Code, ~~nor~~ or attorney
13 work product, as described in Section 2018 of the Code of Civil
14 Procedure.

15 ~~(i)~~—

16 (g) If the provisions of this section are in conflict with the
17 provisions of a memorandum of understanding or other written
18 agreement reached pursuant to Section 3517 or 3517.5, the
19 memorandum of understanding or agreement shall be controlling
20 without further legislative action, except that if any provision of
21 the memorandum of understanding or other agreement requires
22 the expenditure of funds, the provisions may not become effective
23 unless approved by the Legislature.

